

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-01759

COUNSEL: NONE

HEARING DESIRED: NO

JUN 24 1998

APPLICANT REQUESTS THAT:

His bad conduct discharge be upgraded.

APPLICANT CONTENDS THAT:

He is a different man than the teenager who was in the Air Force.

In support of his request, the applicant submits a personal statement, letters of support from family and friends and a letter from a Member of Congress. These documents are appended at Exhibit A.

STATEMENT OF FACTS:

Applicant contracted his initial enlistment in the Regular Air Force on 9 January 1957 for a period of four years.

On 23 April 1957, applicant was notified of his commander's intent to impose nonjudicial punishment (Article 15) for disregarding a wing-base regulation and squadron policy by driving his automobile to [REDACTED] which was beyond the 125 mile pass radius, in violation of Article 92, UCMJ (failure to obey order or regulation). Applicant chose nonjudicial punishment under Article 15 rather than trial by court-martial. The commander, on 23 April 1957, determined that applicant was guilty of the offense and imposed punishment consisting of a reduction in grade from airman third class to airman basic. Applicant did not appeal the punishment.

On 21 May 1957, applicant was tried before a summary court-martial at [REDACTED] for violation of Article 86, UCMJ. He pled guilty to [REDACTED] for 7 days (3 - 9 May 1957). He was sentenced to confinement at hard labor for 30 days and forfeiture of \$55. Only so much of the sentence as provided for confinement at hard labor for 30 days and forfeiture of \$52 was approved and ordered executed by the convening authority.

On 21 May 1957, applicant was tried before a special court-martial at [REDACTED] for violation of Article 86, UCMJ. He

pled guilty to being AWOL for 7 days (17 - 24 June 1957). Applicant was sentenced to confinement at hard labor for two months and forfeiture of \$28 for two months. The sentence was adjudged on 5 July 1957 and was approved and ordered executed by the convening authority on 9 July 1957.

On 15 October 1957, applicant was tried before a special court-martial at Scott AFB for violation of Article 86, UCMJ. He pled guilty to being AWOL for 6 days (19 - 25 September 1957). Applicant was sentenced to be confined at hard labor for four months, to forfeit \$25 for 4 months and to be discharged with a bad conduct discharge (BCD). The sentence was adjudged on 24 October 1957 and, on 31 October 1957, the sentence was approved and the record of trial was forwarded for action under Article 65b. On 5 November 1957, the sentence was modified by the officer exercising general court-martial jurisdiction to the extent that the BCD was suspended until release from confinement or completion of appellate review. The record of trial was forwarded to the Judge Advocate General of the USAF for review by a Board of Review.

On 25 February 1958, applicant was tried before a special court-martial at Scott AFB for violation of Article 86, UCMJ. He pled guilty to being AWOL for 3 days (12 - 15 February 1958) and 5 days (17 - 22 February 1958). Applicant was sentenced to confinement at hard labor for 30 days and forfeiture of \$28. The sentence was approved and ordered executed by the convening authority on 25 February 1958.

On 21 March 1958, he received a bad conduct discharge in the grade of airman basic (permanent) under the provisions of Special Court-Martial Order (SCMO) 18, dated 17 March 1958, and AFR '39-18. He had completed a total of 5 months and 11 days of active duty service and had a total of 261 days of lost time at the time of discharge.

Pursuant to the Board's request, the Federal Bureau of Investigation, Clarksburg, WV, indicated on 19 March 1998, that, on the basis of data furnished, they are unable to identify an arrest record.

AIR FORCE EVALUATION:

The Air Force Legal Services Agency, HQ AFLSA/JAJM, stated that the application was not timely filed and the applicant offers no reason or explanation for his failure to file within the statutory period. JAJM stated that the applicant entered active duty on 9 January 1957, less than a week after his eighteenth birthday. At the time of the court-martial that adjudged his discharge, applicant had two previous court-martial convictions for violations of Article 86. He left his place of duty on both occasions to go to the home of a girl he had gotten pregnant. It was his desire to marry her and he did, during the second period

of absence without leave (AWOL). The second AWOL took place the day following applicant's release from confinement for the first AWOL. JAJM stated that while there appears to be mitigating factors of applicant's youth and the circumstances with his future wife, the court-martial action and the sentence were appropriate for the offenses committed. These factors were fully reviewed in the post-trial phase of the case and no clemency was deemed appropriate. JAJM stated that there are no errors affecting the rights of the applicant that require correction. Accordingly, JAJM recommended the Board interpose the statute of limitations and deny applicant the requested relief. A complete copy of this evaluation is appended at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 22 December 1997 for review and response. As of this date, no response has been received by this office (Exhibit E).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
 2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
 3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We have reviewed the court-martial proceedings and subsequent discharge and believe them to be proper and in accordance with appropriate directives then in effect. Although the applicant provides documentation regarding his post-service activities, we find this information to be of limited scope and, in our view, it does not meet the criteria for approval of the requested relief based on clemency and compassion. We therefore conclude that no basis exists to recommend favorable action on the applicant's request.
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THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 15 May 1998, under the provisions of AFI 36-2603:

Mr. LeRoy T. Baseman, Panel Chair
Mr. Steven A. Shaw, Member
Mr. Parker C. Horner, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 2 Jul 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLSA/JAJM, dated 20 Nov 97.
- Exhibit D. Letters, SAF/MIBR, dated 22 Dec 97, and AFBCMR, dated 6 Mar 98.



LEROY T. BASEMAN
Panel Chair